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09/384,422	08/27/1999	PETER PAUL CAMILLE DE SCHRIJVER	Q55464	7818

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EXAMINER

HOANG, THAI D

ART UNIT

PAPER NUMBER

2662

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

HG

# Office Action Summary

Application No.

09/384,422

Applicant(s)

DE SCHRIJVER ET AL.

Examiner

Thai D Hoang

Art Unit

2662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Application filed on 27 August 1999.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)              | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>Z</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Objections*

Claim 10 is objected to because of the following informality:

Claim 10 missing the steps of *b* and *c*.

Appropriate correction is required.

### *Specification*

The disclosure is objected to because of the following informalities:

Normally, the term Transmission Control Protocol / Internet Protocol is used in the telecommunication field. Therefore, the statement "Internet Protocol Control Protocol" disclosed in the specification should be changed to - Transmission Control Protocol / Internet Protocol- if Applicants want to disclose about that protocol; otherwise, Applicants need to define the term "Internet Protocol Control Protocol."

On page 5, line 16, the statement "...that is at **he** same time..." should be changed to - that is at **the** same time-

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4-6 and 8-10 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable

one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claims 4 and 8, the statement "...service level is satisfying..." is not clear. The specification (pages 4-7) does not adequately define how satisfying is. Furthermore, the specification does not adequately disclose the service level satisfaction based on what standard is.

Regarding claims 5-6 and 9-10, the term "negotiating" is not clear. The specification (pages 4-7) does not adequately define how the system negotiating (increase and/or decrease service level) does. Furthermore, the specification does not disclose the step of negotiating based on what standard is.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3, 5-7, 9-10 are rejected under 35 U.S.C. 102(a) as being unpatentable over Hisanaga et al, US patent no. 5,907,556, hereafter referred to as Hisanaga.

Regarding claim 1, Hisanaga discloses a method and system for transporting data between a data sending unit (1) and a data receiving unit (2) via a point-to-point connection in a communications network comprising at least one of the data sending unit (1) and at least one of the data receiving unit (2) (fig. 1-3, 6, 9-12.) Hisanaga discloses that the method comprises the steps of:

a. sending data towards the data receiving unit (2) by the data sending unit (1) via point-to-point connection (fig. 1-3, 6, 9-12, elements 1 and 2 )

b. receiving the data sent by the data sending unit (1) by the data receiving unit (2), the method further comprises the following steps:

c. sending an Transmission Control Protocol/ Internet Protocol (TCP/IP) request for a service level of sending data to the data receiving unit (2) by the data sending unit (1) (The data sending controlling element 6 controls bandwidth to be used or the like in accordance with the direction of data transmission received by the data transmission direction receiving element 5; fig. 1-3, 6, 9-12; col. 3, lines 11-16, col. 6, line 67 - col. 7 line 3);

d. receiving the TCP/IP service level request from the data sending unit (1) by the data receiving unit (2) (the data transmission controlling information acquiring element 8 acquires necessary information among the pieces of data transmission controlling information exchanged between the sending unit and receiving unit; fig. 1-3, 6, 9-12; col. 3, lines 25-33)

e. determining by the data receiving unit (2) a service level based on at least one predetermined criterion and formulating an TCP/IP propose of the service level that can be provided to a data sending element (7) (The data transmission rate determination element 13 determines a bandwidth to be assigned to each attempt of data transmission based on the requested transmission rate acquired by the data transmission controlling information acquiring element 8 and the states of use of the bandwidth; col. 9, lines 12-34);

f. sending the TCP/IP propose of the service level towards the data sending unit (1) (the data transmission direction sending element 10 sends a bandwidth to be assigned determined by the data transmission rate determination element 13 assumed to be the available bandwidth, as the data transmission direction information, to the sending unit 1; col. 9, lines 57-64; col. 10, lines 11-19, and 21-29);

g. receiving the TCP/IP propose of the service level and using the propose of the service level by the data sending element (7) (see fig. 7 and 8; col. 10, line 62 – col. 11, line 14.)

Regarding claim 2, Hisanaga discloses a method and system for transporting data between a data sending unit (1) and a data receiving unit (2) via a point-to-point connection in a communications network comprising at least one of the data sending unit (1) and at least one of the data receiving unit (2) (fig. 1-3, 6, 9-12.) Hisanaga discloses that the method comprises the steps of:

a. sending data towards the data receiving unit (2) by the data sending unit (1) via point-to-point connection (fig. 1-3, 6, 9-12, elements 1 and 2 )

b. receiving data sent by the data sending unit (1) by the data receiving unit (2), the method further comprises the following steps:

c. determining by the data receiving unit (2) a service level based on at least one predetermined criterion and formulating an TCP/IP propose of the service level that can be provided to the data sending element (7) (The data transmission rate determination element 13 determines a bandwidth to be assigned to each attempt of data transmission based on the requested transmission rate acquired by the data

transmission controlling information acquiring element 8 and the states of use of the bandwidth; col. 9, lines 12-34);

d. sending the TCP/IP propose of the service level towards the data sending unit (1) (the data transmission direction sending element 10 sends a bandwidth to be assigned determined by the data transmission rate determination element 13 assumed to be the available bandwidth, as the data transmission direction information, to the sending unit 1; col. 9, lines 57-64; col. 10, lines 11-19, and 21-29);

e. receiving the TCP/IP propose of the service level and using the propose of the service level by the data sending element (7) (see fig. 7 and 8; col. 10, line 62 – col. 11, line 14.)

Regarding claims 3 and 7, Hisanaga discloses that the Data sending unit (1), to be used for sending data (fig. 2, 6, and 9-12), over a link through a communications network towards a data receiving unit (2), the data sending unit (1), comprising the following means:

a. data sending means (data sending element 7), adapted to send data towards the data receiving unit (2). The data sending unit (1) further comprises the following means:

b. service level requesting means (data sending controlling element 6), adapted to request the data receiving unit (2) for a service level for sending data using an TCP/IP message (The data sending controlling element 6 controls bandwidth to be used or the like; fig. 2, 6, and 9-12; col. 3, lines 11-14; col. 8, lines 58-64);

c. service level propose receiving means (data sending controlling element 6), coupled with an output to an input of the data sending element (7) and adapted to receive an TCP/IP propose for a service level and to notify the data sending element (7) of the propose for the service level (The data sending element 7 sends data to the data receiving unit 2 under the control of the data sending controlling element 6; col. 3, lines 16-18.)

Regarding claims 5 and 9, Hisanaga discloses that the Data receiving unit (2), to be used for receiving data (fig. 6, and 9-12), over a link through a communications network from a data sending unit (1), the data receiving unit (2) comprising the following means:

a. data receiving element (11), adapted to receive data from the data sending unit (1). The data receiving unit (2) further comprises the following means:

b. service level request reception means (data transmission controlling information acquiring element – fig. 6, 8, 10-12, element 8; fig. 9, element 16), adapted to receive a service level request from the data transmitting unit (1) using an TCP/IP message (The data transmission controlling information acquiring element 8 acquires necessary information among the pieces of data transmission controlling information exchanged between the sending unit and receiving unit; col. 3, lines 26-29; col. 9, lines 13-17, col. 11, lines 56-59);

c. service level negotiating and proposing means (data transmission rate determination element; fig. 6, 10-12, element 13; fig. 9 element 17), coupled with an input to an output of the service level request reception means (data transmission



controlling information acquiring element, fig. 6, 10-12 element 8; fig. 9, element 16) and adapted to determine a service level based on at least one predetermined criterion and to formulate a propose for the service level (The data transmission rate determination element 13 determines a bandwidth to be assigned to each attempt of data transmission based on the requested transmission rate acquired by the data transmission controlling information acquiring element 8 and the states of use of the bandwidth; col. 9, lines 25-29, and lines 60-62; col. 10, lines 11-19; col. 11, lines 59-63);

d. service level proposal sending means (data transmission direction sending element 10, fig. 6, 10-12; fig. 9 element 19), coupled with an input to an output of the service level negotiating and proposing means (data transmission rate determination element; fig. 6, 10-12, element 13; fig. 9 element 17) and adapted to send the propose for the service level using an TCP/IP message (the data transmission direction sending element 10 sends a bandwidth to be assigned determined by the data transmission rate determination element 13 assumed to be the available bandwidth, as the data transmission direction information, to the sending unit 1; col. 9, lines 57-64; col. 10, lines 12-19; col. 11, line 67 – col. 12, line 2; col. 12, lines 26-28)

Regarding claims 6 and 10, Hisanaga discloses that the Data receiving unit (2), to be used for receiving data (fig. 6, and 9-12), over a link through a communications network from a data sending unit (1), the data receiving unit (2) comprising the following means:

a. data receiving element (11), adapted to receive data from the data sending unit (1). The data receiving unit (2) further comprises the following means:

b. service level negotiating and proposing means (data transmission rate determination element; fig. 6, 10-12, element 13; fig. 9 element 17), coupled with an input to an output of a service level request reception means (data transmission controlling information acquiring element, fig. 6, 10-12 element 8; fig. 9, element 16) and adapted to determine a service level based on at least one predetermined criterion and to formulate a propose for the service level (The data transmission rate determination element 13 determines a bandwidth to be assigned to each attempt of data transmission based on the requested transmission rate acquired by the data transmission controlling information acquiring element 8 and the states of use of the bandwidth; col. 9, lines 25-29, and lines 60-62; col. 10, lines 11-19; col. 11, lines 59-63);

c. service level proposal sending means (data transmission direction sending element 10, fig. 6, 10-12; fig. 9 element 19), coupled with an input to an output of the service level negotiating and proposing means (data transmission rate determination element; fig. 6, 10-12, element 13; fig. 9 element 17) and adapted to send a propose for the service level using an TCP/IP message (the data transmission direction sending element 10 sends a bandwidth to be assigned determined by the data transmission rate determination element 13 assumed to be the available bandwidth, as the data transmission direction information, to the sending unit 1; col. 9, lines 57-64; col. 10, lines 12-19; col. 11, line 67 – col. 12, line 2; col. 12, lines 26-28)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisanaga et al, US patent no. 5,907,556 as applied claims above.

Regarding claims 4 and 8, Hisanaga discloses that the Data sending unit (1) further comprises a service level propose renegotiating means (data sending controlling element 6), and adapted to check if the TCP/IP propose for a service level is satisfying and if not, to formulate another request for the service level.

Hisanaga does not discloses that a service level propose renegotiating means (data sending controlling element 6) coupled between an output-terminal of a service level propose receiving means and an input-terminal of a service level requesting means.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure of the data sending controlling element (6) disclosed by Hisanaga to multiple separate means, each means for a special function in order to ease complication when designing the data sending controlling element (6) of the data sending unit (1).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to the application:

US Patent No. 6,078,564 A to Lakshman et al

US Patent No. 6,286,052 B1 to McCloghrie et al

US Patent No. 5,892,754 A to Kompella et al

US Patent No. 6,163,808 A to Kilkki

US Patent No. 6,363,053 B1 to Schuster et al

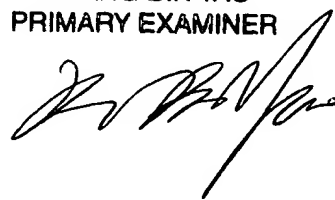
US Patent No. 5,634,006 A to Baugher et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai D Hoang whose telephone number is (703) 305-3232. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (703) 305-4744. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and after final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

KWANG BIN YAO  
PRIMARY EXAMINER



Thai Hoang  
November 29, 2002